



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Parts 201 and 202**

**[Docket No. 2020-4]**

#### **Technical Amendments Regarding Electronic Submissions to the Copyright Office**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

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**SUMMARY:** The U.S. Copyright Office is adopting technical amendments to allow electronic submission of materials in connection with certain Office services, and to allow the Office to respond to submitters electronically. These amendments are intended to facilitate the public's ability to access Office services during the COVID-19 pandemic.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at [regans@copyright.gov](mailto:regans@copyright.gov); Kevin R. Amer, Deputy General Counsel, by email at [kamer@copyright.gov](mailto:kamer@copyright.gov); or Nicholas R. Bartelt, Attorney-Advisor, by email at [niba@copyright.gov](mailto:niba@copyright.gov). They can be reached by telephone at 202-707-3000.

**SUPPLEMENTARY INFORMATION:** In response to the COVID-19 pandemic, the President has declared a national emergency and executive branch and state governments have adopted guidelines recommending, among other restrictions, that members of the

public avoid discretionary travel.<sup>1</sup> Consequently, users of the Copyright Office’s services currently may be limited in their ability to physically deliver materials to the U.S. Postal Service or other carrier for shipment to the Office. In addition, the Office has implemented an extended telework policy, resulting in a substantially reduced number of onsite staff available to process deliveries to and from the Office. Further, because the Office is currently closed to the public, it cannot receive in-person deliveries.<sup>2</sup>

While much of the Office’s services, including applications for copyright registration submitted through the electronic Copyright Office (“eCO”) system, are already largely digital, in some cases users are required to submit materials through physical mailing services. To help ensure both that members of the public can continue to access Office services and that Office staff can respond to inquiries in a timely manner, the Office is updating various regulations to allow certain types of submissions and responses to be made electronically, for example, through dedicated email addresses that the Office is establishing. Previously, these regulations permitted delivery only by mail or other physical means. The updates pertain to the following Office services: (1) submitting notices of termination for recordation,<sup>3</sup> (2) requests for removal of personally identifiable information from the online public catalog or other public records,<sup>4</sup> (3) cancellation of

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<sup>1</sup> See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>2</sup> The Copyright Office continues to receive mail sent through the postal delivery system. All mail is being redirected and stored at a storage facility until the building resumes normal operations. As with prior closures, such as due to a government shutdown, the Office will process that mail upon reopening of the Library of Congress.

<sup>3</sup> *Id.* at § 201.1(c)(2).

<sup>4</sup> 37 CFR 201.1(c)(7), 201.2(e) and (f).

completed registrations,<sup>5</sup> (4) filing of satellite carrier statements of account,<sup>6</sup> (5) recordation of certain contracts by cable systems located outside of the forty-eight contiguous states,<sup>7</sup> (6) filing of statements of account for digital audio recording devices or media,<sup>8</sup> (7) filing of a Notice of Intent to Enforce a Restored Copyright,<sup>9</sup> (8) filing of a Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price,<sup>10</sup> (9) group registration of automated databases,<sup>11</sup> (10) requests for reconsideration for refusals to register,<sup>12</sup> (11) supplementary registrations for restored works, non-photographic databases, and renewal registrations,<sup>13</sup> (12) registration of restored copyrights,<sup>14</sup> (13) renewal registrations,<sup>15</sup> and (14) requests for full-term retention of copyright deposits.<sup>16</sup>

The final rule also updates several of these regulations to remove the requirement that submissions to the Office contain a handwritten signature. The rule instead adopts a more flexible requirement that submissions contain “a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006.” The Office previously adopted a rule permitting electronic signatures on statements of account filed with the

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<sup>5</sup> *Id.* at §§ 201.1(c)(3), 201.7.

<sup>6</sup> *Id.* at § 201.11.

<sup>7</sup> *Id.* at § 201.12.

<sup>8</sup> *Id.* at § 201.28.

<sup>9</sup> *Id.* at § 201.33.

<sup>10</sup> *Id.* at § 201.39.

<sup>11</sup> *Id.* at § 202.3.

<sup>12</sup> *Id.* at §§ 201.1(c)(3), 202.5.

<sup>13</sup> *Id.* at § 202.6(e)(4).

<sup>14</sup> *Id.* at § 202.12.

<sup>15</sup> *Id.* at § 202.17.

<sup>16</sup> *Id.* at § 202.23.

Office under the statutory license for secondary transmissions by cable systems,<sup>17</sup> and the same rationale is applicable here. These changes apply to regulations governing statements of account for satellite carriers and digital audio recording technology products, recordation of certain cable contracts, and full-term retention requests.

As new electronic submission options are implemented, the Office will provide instructions on its website and on any relevant Office forms. The Office also will provide electronic submission options for other services where such delivery methods are already permitted under existing regulations, including filing recorded documents and notices of termination.<sup>18</sup> For information about these options and other Office operations during the COVID-19 pandemic, members of the public should visit <https://www.copyright.gov/coronavirus>, which will be updated regularly.

In light of the ongoing national emergency, the Copyright Office finds good cause to publish these amendments as a final rule effective immediately, and without first publishing a notice of proposed rulemaking, “because of the demonstrable urgency of the conditions they are designed to correct.”<sup>19</sup> Further, these updates constitute a change to a “rule[ ] of agency . . . procedure, or practice”<sup>20</sup> which do not “alter the rights or interests

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<sup>17</sup> Authentication of Electronic Signatures on Electronically Filed Statements of Account, 82 FR 22,884 (May 19, 2017).

<sup>18</sup> For example, on March 18, 2020, the Office modified its processes to allow for receipt of requests for special handling of registration applications via electronic application. *See* U.S. Copyright Office, Registration Special Handling Arrangements, NewsNet No. 807 (Mar. 18, 2020), <https://www.copyright.gov/newsnet/2020/807.html>.

<sup>19</sup> H.R. Rep. No. 1980, 79th Cong., 2d Sess. 26 (1946). *See* 5 U.S.C. 553(d)(3); *id.* at 553(b)(3)(B) (notice and comment is not necessary upon agency determination that it would be “impracticable, unnecessary, or contrary to the public interest”).

<sup>20</sup> 5 U.S.C. 553(b)(A).

of parties,” but merely “alter[s] the manner in which the parties present themselves or their viewpoints to the agency.”<sup>21</sup>

### **List of Subjects**

37 CFR Part 201

Cable television, Copyright, Recordings, Satellites.

37 CFR Part 202

Claims, Copyright.

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

### **PART 201—GENERAL PROVISIONS**

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. Amend § 201.1 by:

a. In paragraph (b)(1), adding “, or as otherwise indicated in instructions on the Copyright Office’s website or forms provided by the Office” after the word “20559-6000”.

b. In paragraph (c)(2), adding the words “and submitted either electronically in the form and manner prescribed in instructions on the Office’s website or by mail to” after “Notices of Termination,”.

c. In paragraph (c)(3), adding the words “and submitted either electronically in the form and manner prescribed in instructions on the Office’s website or by mail to” after “RAC Division,”.

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<sup>21</sup> *JEM Broad. Co. v. F.C.C.*, 22 F.3d 320, 326 (D.C. Cir. 1994).

d. In paragraph (c)(4), adding the words “and submitted either electronically in the form and manner prescribed in instructions on the Office’s website or by mail to” after “Records Research and Certification Section,”.

e. In paragraph (c)(5), adding a sentence at the beginning of the paragraph and removing the word “Notices” and adding in its place “If sending by mail, notices”.

f. In paragraph (c)(7):

i. Removing “, P.O. Box 70400, Washington, DC 20024-0400” in the first sentence.

ii. Removing the words “should be” in the second sentence and in their place adding “may be submitted either electronically in the form and manner prescribed in instructions on the Office’s website or by mail to P.O. Box 70400, Washington, DC 20024-0400, and”.

The addition reads as follows:

§ 201.1 Communication with the Copyright Office.

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(c)\*\*\*

(5)\*\*\* Filings or inquiries to the Licensing Division may be submitted either electronically in the form and manner prescribed in instructions on the Office’s website or by mail. \*\*\*

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§ 201.2 [Amended]

3. Amend § 201.2 by:

a. In paragraph (e)(4), removing “mailed to the address listed” and in its place adding the words “sent to the Office as prescribed”.

b. In paragraph (e)(5), removing the word “mail” and in its place adding the word “send” and adding “physical mail address or email” before the word “address”.

c. In paragraph (e)(7), removing the words “mailed to the address listed” and in their place adding the words “sent to the Office as prescribed”.

§ 201.7 [Amended]

4. Amend § 201.7 by:

a. In paragraph (c)(1), removing the word “mailed” and in its place adding the word “sent”.

b. In paragraph (c)(4), removing the word “mailed” and in its place adding the word “sent”.

§ 201.11 [Amended]

5. Amend § 201.11(e)(9) introductory text by removing the words “The handwritten signature” and adding in their place “A legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006,”.

§ 201.12 [Amended]

6. Amend § 201.12(a)(1) by:

a. Removing the words “legible photocopy or other full-size facsimile reproduction” and adding in their place the word “copy”.

b. Removing the words “signed by” and adding in their place “that shall include a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of”.

§ 201.28 [Amended]

7. Amend § 201.28(e)(7) by removing the words “the handwritten signature” and adding in their place “a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006.”.

§ 201.33 [Amended]

8. Amend § 201.33(c) by removing “and should be typed or printed by hand legibly in dark, preferably black, ink, on 8½ by 11 inch white paper of good quality, with at least a one inch (or three cm) margin” and adding in its place “, legible, and submitted in a letter-sized document format”.

§ 201.39 [Amended]

9. Amend § 201.39(g) by removing “at the address specified” and adding in its place “in the manner prescribed”.

## **PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT**

10. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.

11. Amend § 202.3 by revising paragraph (b)(5)(ii)(A) to read as follows:

### **§ 202.3 Registration of copyright.**

\* \* \* \* \*

(b)\*\*\*

(5)\*\*\*

(ii)\* \* \*

(A) A form that best reflects the subject matter of the material in the database as set forth in paragraph (b)(2)(ii)(A) of this section, completed in accordance with the instructions



provided by the Copyright Office on its website or in materials published by the Office.

Applications for group registration of an automated database consisting predominantly of photographs may be submitted electronically only after consultation and with the permission and under the direction of the Visual Arts Division.

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§ 202.5 [Amended]

12. Amend § 202.5 by:

a. In paragraph (b)(3), removing “or” after the word “postmarked” and adding a comma in its place and adding “, or otherwise received by the Office,” after the word “messenger”.

b. In paragraph (c)(3), removing “or” after the word “postmarked” and adding a comma in its place and adding “, or otherwise received by the Office,” after the word “messenger”.

§ 202.6 [Amended]

13. Amend § 202.6(e)(4) by removing the words “a paper” and adding in their place the word “an”.

§ 202.12 [Amended]

14. Amend § 202.12(c)(1) by adding “or electronically, in accordance with instructions for submission and payment provided on the Office’s website or Form GATT itself” after “by mail”.

§ 202.17 [Amended]

15. Amend § 202.17(g)(1) by removing “mailed to the address specified” and adding in its place “sent in the manner prescribed”.

§ 202.23 [Amended]

16. Amend § 202.23(b)(2) by:

- a. Removing the words “at the address specified” and adding in their place the words “in the manner prescribed”.
- b. Removing the words “be signed by” and adding in their place “include a legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006, of”.

Dated: April 2, 2020.

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**Maria Strong,**

*Acting Register of Copyrights and*

*Director of the U.S. Copyright Office.*

Approved by:

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**Carla D. Hayden,**

*Librarian of Congress.*

**[BILLING CODE 1410-30-P]**

[FR Doc. 2020-07353 Filed: 4/7/2020 8:45 am; Publication Date: 4/8/2020]